

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT TACOMA

4 UNITED STATES OF AMERICA,) Docket No. CR05-5828RBL
5 Plaintiff,) Tacoma, Washington
6 vs.) March 16, 2012
7 JUSTIN SOLONDZ,)
8 Defendant.)
9

10 TRANSCRIPT OF SENTENCINGS PROCEEDINGS
11 BEFORE THE HONORABLE RONALD B. LEIGHTON
12 UNITED STATES DISTRICT COURT JUDGE

13 APPEARANCES:

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1 FRIDAY, MARCH 16, 2012 - 1:30 P.M.

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3 THE COURT: Please be seated. Good afternoon.

4 THE CLERK: This is in the matter of the United
5 States of America versus Justin Solondz, Cause No.
6 CR05-5828RBL.

7 Counsel, please make their appearances.

8 MR. WOODS: Good afternoon, Your Honor. Tom Woods
9 and Andrew Friedman on behalf of the United States.

10 THE COURT: Thank you.

11 MR. NANCE: Good afternoon, Your Honor. Michael
12 Nance for Justin Solondz.

13 THE COURT: Mr. Nance, Mr. Solondz, good afternoon.

14 All right. This matter comes before the Court for
15 imposition of sentence. I have reviewed the presentence
16 report, the government's sentencing memorandum, the defense
17 sentencing memorandum and attachments, the supplement to the
18 defense sentencing memorandum and attachments and the second
19 supplement to the defense sentencing memorandum and the plea
20 agreement.

21 Are there documents that I should have reviewed that I
22 have not reviewed?

23 MR. WOODS: I don't believe so, Your Honor.

24 MR. NANCE: No, Your Honor.

25 THE COURT: Okay. Mr. Nance, have you had time to

1 review the presentence report with Mr. Solondz?

2 MR. NANCE: I have, Your Honor, in fairly good
3 detail.

4 THE COURT: Mr. Solondz, do you believe you
5 understand the recommendation that the presentence report
6 makes?

7 THE DEFENDANT: Yes, I do, Your Honor.

8 THE COURT: Mr. Solondz stands convicted of Count 1,
9 conspiracy; Count 5, arson.

10 The presentence report gives the guideline calculation.
11 The base offense level is 24. There's a 12-level increase for
12 a federal crime of terrorism. The adjusted offense level is
13 36, minus three levels for acceptance of responsibility. The
14 total offense level is 33. The criminal history category is
15 I. The range is 235 to 293 months. The recommendation is for
16 120 months followed by three years supervised release and
17 restitution in the amount of \$6,092,649.95.

18 The government recommends 84 months. The base level of 24
19 is because the fire created a substantial risk of death or
20 bodily injury to the fire fighters and to the destruction of a
21 state facility. A federal crime of terrorism translates into
22 a revised criminal history of VI.

23 They note that Kolar got 60 months for two or three
24 arsons; Phillabaum, 36 months for one arson; and Waters, the
25 parties recommend 48 months.

1 The defense asks for -- agrees with 84 months. They argue
2 that the criminal history is exaggerated, and they are seeking
3 Bureau of Prisons management variable from the criminal
4 history calculation of VI to a lesser category.

5 So those are the high points. Mr. Nance, I will hear from
6 you first.

7 MR NANCE: Thank you. Your Honor, as the Court has
8 noted, the parties agree on the proper sentence here. It is
9 in the plea agreement. We have a basic agreement on the facts
10 of the case.

11 THE COURT: Right.

12 MR. NANCE: Mr. Solondz agrees that he was part of
13 this conspiracy, that he participated in the arson at the
14 University of Washington almost 11 years ago, that he helped
15 build the incendiary devices. He agrees that he was out of
16 the United States between September of 2005 and July of 2011,
17 that he spent considerable time in China, including about 28
18 months in a Chinese prison.

19 We differ just a little, Your Honor, with the government's
20 perception of his relative culpability regarding the other
21 participants in this conspiracy arson. He is characterized as
22 having a role greater than everyone but William Rodgers. We
23 think it is appropriate to compare his actions with those of
24 the co-defendants in the UW arson, and really with the five
25 defendants in the companion arson of the Jefferson poplar

1 farm, the arson that occurred at the same time in Oregon.

2 In essence, of these 10 people, Justin Solondz was the
3 youngest of the bunch by several years; he was just 21 years
4 of age at the time. He did not have their experience at prior
5 arsons. He was not part of the conception of the planned
6 burn, the Center for Urban Horticulture at UW, nor did he have
7 the credibility with the group to even be invited to their
8 planning sessions.

9 His overall role, even considering his involvement in
10 helping make the incendiary devices, we would submit, was no
11 greater than the average participant and may have been less.
12 To appreciate this, it is, I think, helpful to understand the
13 nature of the conspiracy and the conspirators. You can refer
14 to them as the family, you can call them the Earth Liberation
15 Front, the Animal Liberation Front, the Radical Underground
16 Environmentalist Vanguard, whatever term you want to put on
17 it.

18 This was a loose, nonhierarchical group of people with a
19 strong affinity for the environment, with very differing
20 opinions on the severity of the proper tactics to take to
21 address problems with environmental degradation. The planning
22 and strategy sessions for these tactics of this loose group
23 were known as so-called book club meetings.

24 Now, the book club meetings, it becomes clear if you read
25 through the discovery, they were the guts of the conspiracy.

1 This was where open brainstorming was encouraged, where ideas
2 and expertise was exchanged, where personal alliances were
3 created and confirmed. It's really where conspiratorial plots
4 were hatched. It was a privilege. It was a mark of
5 recognition by the radical echo activists to be invited to and
6 accepted into these planning sessions, these book club
7 meetings.

8 And with two exceptions, all of the people in the arson at
9 UW and all of the people at the companion arson at Jefferson
10 poplar farm in Oregon, the people who comprised the general
11 conspiracy charged in the Indictment, all of these people had
12 attended and participated in these book club meetings. The
13 two exceptions were Briana Waters and Justin Solondz.

14 If I could give just a brief overview of our perception of
15 the other participants in the UW arson. The sort of
16 unquestioned mastermind of this arson was William Rodgers, who
17 was 36 years of age at the time of the arson. He had a long
18 history of committing arsons, by one count, six arsons over a
19 four-year period. He planned the UW arson, along with others,
20 at the book club meetings. He recruited everyone for the UW
21 arson, and he assigned them tasks.

22 He personally planted the devices, the incendiary devices,
23 in the Center for Urban Horticulture, together with one of the
24 Jefferson poplar conspirators, Stanislas Meyerhoff. He
25 coauthored the widely-distributed manual on how to construct

1 incendiary devices with timers.

2 He helped -- Rodgers did -- helped write the communique
3 after-the-fact of the UW arson. He recruited Mr. Solondz, a
4 man 15 years his junior, to participate in the action for a
5 purpose, and the purpose was to stop genetic engineering of
6 poplar trees. Mr. Solondz didn't fully understand the full
7 significance of the priority of that, but he accepted it. The
8 decision to do the arson at the Center for Urban Horticulture
9 had already been made. It was a question of filling out the
10 roles, and when Rodgers recruited him, that is what he was
11 doing.

12 One of the other key figures here was a woman named
13 Jennifer Kolar, who was 27 years of age at the time.
14 Remember, Mr. Solondz was 21. She's 27. She participated,
15 according to her plea agreement, in three different arsons and
16 one attempted arson going back as far back as July 1997, the
17 Cavel West arson in Oregon, where she helped produce what was
18 called vegan jello. It's a fuel mixture with glycerine soap
19 and diesel. In that action, which was successful, she burned
20 the place down. She acted as a lookout, poured fuel into the
21 wall at the site.

22 And then a year later, she was involved in the Ray Gun
23 Club arson in Colorado. There, she built and set up
24 incendiary devices. Fast forward to the arson at UW in May of
25 2001, she's characterized as merely cutting glass. And then a

1 few months later in Susanville, California, she's an active
2 participant in the BLM Wild Horse Corrals there in Susanville.
3 In the fall of 2001, she set up incendiary devices there.

4 She was an active participant in the book club meetings in
5 at least three different states, maybe four. Certainly,
6 California, Oregon and Washington. At these meetings with
7 other conspirators, she was a well-educated woman. She almost
8 had a Ph.D. in, I think it was, physics or something like
9 physics. And she had professional work experience as well.

10 Anyway, she used that technical education and that
11 technical background to instruct others on computer encryption
12 expertise and the like that allowed the group to communicate
13 in code. And at the California book club meeting, the other
14 people in attendance were the very conspirators that we're
15 talking about today: William Rodgers, Lacey Phillabaum,
16 Stanislas Meyerhoff and the other Jefferson poplar people,
17 Danny McGowan, Joyanna Zacher, Nathan Block and Suzanne
18 Savoie.

19 Then there was a later book club meeting in Olympia, in
20 which the same people showed up who would commit the other
21 half there. Of course, Mr. Solondz was not present at that
22 meeting -- at either meeting -- or at any other book club
23 meeting ever because he just didn't have the credentials
24 within the -- as a proven underground activist. He was too
25 young. He was too inexperienced.

1 There's a reference in the discovery to the so-called new
2 people, and that would be Briana Waters and Mr. Solondz as new
3 people. They were above-ground activists, people that just
4 had not yet been fully vetted or trusted enough to participate
5 in the book club meetings where the real strategizing
6 occurred.

7 THE COURT: Sounds like the development of the Crips
8 and the Bloods.

9 MR. NANCE: Well --

10 THE COURT: Initiation and getting your resume in
11 shape.

12 MR NANCE: You have to kind of prove yourself to even
13 participate. You've got to make the grade.

14 Jennifer Kolar was really one of the co-leaders at the UW
15 arson. She filled a critically important role that we think
16 it is unfair to compartmentalize as, simply, she cut the
17 glass. She was experienced enough to be trusted with what
18 really was a critical task in this mission. This was a
19 high-anxiety sort of thing. A rookie like Mr. Solondz
20 wouldn't have been trusted to do that because the person
21 cutting the glass had to maintain their poise, not lose their
22 cool, had to avoid leaving fingerprints, footprints, fiber,
23 hair evidence.

24 If she failed in the moment, the mission would fail, and
25 if she left telltale evidence at the scene, they would all be

1 caught. She had the experience and the expertise for this
2 major role. Justin Solondz did not have that.

3 The same is true for Lacey Phillabaum. She had a long
4 activist involvement. She hadn't done as many arsons as
5 Jennifer Kolar. In fact, she pled to a single arson. But she
6 had been to a number of these planning sessions, these book
7 club meetings in several different states. She testified at
8 the Briana Waters trial two or three years ago, and she
9 testified to the nature of the book club meetings and her
10 conspiratorial nature, and according to her testimony, they
11 discussed things such as what are we going to do now to
12 inspire the movement and what directions of movement should we
13 take next.

14 By the second or third book club meeting, the entire group
15 was receiving special training from characters like Meyerhoff
16 and a woman named Chelsea Gerlach on how to construct
17 incendiary devices, and the whole group would practice, and
18 Phillabaum in her testimony describes soldering to make the
19 devices.

20 So at the scene, to bring us back to the UW arson, she's
21 sort of compartmentalized. She's merely the person that
22 handed the stuff to Rodgers after he went into the place. But
23 again, this is a critical role. She's right there in the
24 moment, and only the experienced and trusted need apply for
25 this sort of thing, stuff that -- experience and trust that

1 Justin Solondz did not have.

2 Immediately afterwards, or within a day or so of this, she
3 helped write the communique about what had happened,
4 announcing to the world the horrible nature of what was going
5 on at the UW, et cetera, and she admitted that she's written
6 other communiques at other actions.

7 Well, Mr. Solondz did not have that experience. He hadn't
8 earned the trust yet to do the hands-on stuff at the very site
9 of the arson and certainly not to compose a statement that
10 purports to speak for the group. Yes, he did help make the
11 devices, but he had help in doing that. He did so offsite at
12 a so-called clean room. He did it in advance so that his work
13 could be checked and monitored and fixed if it wasn't up to
14 snuff.

15 They really didn't need Justin Solondz to make an
16 incendiary device. They were the experts. Remember, Rodgers
17 and Meyerhoff had written the manual on how to do it, and the
18 other members had been to the book club meetings where, again,
19 they were specifically trained in the project -- in the
20 subject. Justin Solondz was told to build the devices, to
21 help with that, because the others needed for him to get his
22 hands dirty. That is why he was assigned this role.

23 Now, he accepts responsibility for what he did. He helped
24 commit this terrible crime. He helped construct the device to
25 make it happen. He believed what he was told, that this was a

1 limited action. It may seem crazy to think you can start a
2 small fire in the office and the fire fighters are going to
3 come and put it out, but he believed that. He also believed
4 that no person would be endangered.

5 THE COURT: Ever hear of the Pang fire, the warehouse
6 fire?

7 MR NANCE: I certainly have.

8 THE COURT: Did he know it? Was he smart enough to
9 figure out that firemen were going to be in jeopardy?

10 MR NANCE: In hindsight, it is obvious, that's the
11 reason arson is such a terrible thing, one of the things.

12 What he did, constructing the device and serving as the
13 get-away driver, I would suggest would have been more easily
14 replicated than finding willing accomplices who were able to
15 competently break glass at the scene and hand devices to
16 Rodgers.

17 Under these circumstances, it is not accurate to say that
18 Mr. Solondz, Justin Solondz, played a greater role than most
19 others at this arson.

20 I mentioned the communique that was written a day or so
21 later. It appears that Lacey Phillabaum and Daniel McGowan
22 were the two principal authors of the communiques. It's hard
23 to tell for sure, but it sounds like there were two different
24 communiques written. They were sent to the so-called press
25 office or press agent of the ELF, and it was modified either

1 there or by Rodgers. I don't believe anybody really knows for
2 sure. But Mr. Solondz, Justin Solondz, had no role in
3 writing, formulating or editing any communique.

4 Of the four participants in that arson, the one that he's
5 most similar to, we submit, is Briana Waters. Briana Waters
6 is four years his senior. She was 25 years old at the time.
7 She didn't help build incendiary devices, but she did help
8 provide the cover for it, and she certainly knew about it. If
9 you view her situation prior to her cooperation, she was very
10 late coming to the table on this, as you well know.

11 At her first sentencing, after she put the government to
12 the test at trial -- and she's openly admitted this -- she
13 openly perjured herself at that trial, refused to accept
14 responsibility for her actions, and instead posturing as a
15 martyr for the cause who was targeted and convicted by a
16 corrupt legal system. She got six years. Six years.

17 Justin Solondz hasn't perjured himself. He's admitted
18 guilt and responsibility. He has not played the martyr. He's
19 in a more favorable position than Briana Waters was at the
20 time of her sentencing. She got six years. Although he
21 shouldn't get any more than that, we've agreed to ask for
22 seven, and that is what we are asking for today.

23 If we broaden the comparison for just a moment to include
24 the other conspirators in the events of May 21st, the
25 Jefferson poplar farm people, all of those participants --

1 Block, Zacher, Savoie, McGowan and Meyerhoff -- were all
2 radical echo activists with multiple arsons to their credit.
3 All had attended multiple book club meetings. I singled out
4 Danny McGowan for comparison in my brief because he received
5 seven years, and that's the recommendation the government and
6 the defense is making in this case.

7 We would submit that McGowan's conduct was far more
8 aggravated than Justin Solondz' conduct because McGowan also
9 helped construct incendiary devices, including the very
10 incendiary devices that were used at UW in this arson.

11 He was convicted of two arsons. He was five years older
12 than Mr. Solondz. He was more seasoned than he was. He had
13 experience writing communiques after various arsons. He had
14 attended several book club meetings and, as late as 2005, some
15 four years after the arson, at a time when Mr. Solondz had
16 clearly moved on to other aspects of life, Mr. McGowan, Danny
17 McGowan, is out obstructing -- talking about it at least --
18 obstructing Grand Jury investigations.

19 McGowan did not cooperate. He got seven years. Justin
20 Solondz, who never attended a book club meeting and is here
21 for a single arson, and who left this life behind again in
22 2001, shouldn't get a day more than Daniel McGowan who got
23 seven years.

24 Justin Solondz does not see himself as a martyr for any
25 cause. He does not speak for any group, the ELF or anyone

1 else, and they don't speak for him. His participation in this
2 crime was a very expensive lesson on how to conduct himself,
3 how to relate to others, and it drove him into a long,
4 probably lifelong search for self-understanding and meaning.

5 There's talk about others have provided cooperation and he
6 hasn't. None of the other four UW codefendants came forward
7 until after they were formally charged. The earliest was four
8 years, almost four and a half years after the arson. Of
9 course, for Briana Waters it was ten years after the arson.

10 Mr. Solondz doesn't fault them for doing that. He's not
11 in a position to cooperate. By the time he returned to U.S.
12 soil last July, the arson and his connections to the
13 surrounding characters were ten years old. Most of the other
14 participants in the Waters conspiracy have been prosecuted,
15 located. He doesn't have any useful information to give the
16 government about anyone or thing. And he's frankly more
17 comfortable working on his own self-awareness, his own
18 relationship to the world than in trying to improve his
19 position by taking down others.

20 Incidentally, he wishes the very best to his former
21 conspirators, hopes for the very best, including Briana Waters
22 who I think will be sentenced later. He hopes for the very
23 best for her.

24 Who is Justin Solondz? Well, I think you get a flavor
25 from reading the letters that I submitted, and I didn't mean

1 to overwhelm the Court with them, but they were overwhelming
2 me, and I just passed them along. He's obviously made a very
3 deep impression on almost everyone that has ever known him
4 from a very young age.

5 He strikes most of the people as the kind of person that
6 you would want to have as a personal friend. He's
7 considerate. He's thoughtful. He's honest about his
8 feelings. He's kind hearted, compassionate. And this goes
9 back a long way. He remembered as a young child on vacation
10 looking out for the welfare of the under-privileged hotel
11 help, and that was striking to me. He's remembered as making
12 socially awkward classmates feel welcome, brokering peace on
13 his high school soccer team among competing cliques. He's
14 respectful of his elders. I can tell you, he's one of the few
15 clients I have, present or past, that calls me Mr. Nance.
16 He's the guy everybody wanted to be friends with. In fact,
17 one writer said he was "a bright shining light wherever he
18 went."

19 THE COURT: Have you tried to analyze, draw the
20 connection between those descriptors and the conduct? Because
21 it is tough to see somebody who does something like that, has
22 to put -- he's either got a low empathy quotient or he just
23 disregards his own belief about people in support of some
24 moral --

25 MR NANCE: I don't think it is for any lack of

1 empathy. I mean, I was on the phone with him a day or two ago
2 talking, and he was concerned about cutting into the time of
3 the other inmates talking to their lawyers and, therefore, we
4 needed to cut our conversation.

5 He is -- that is not where I think he's coming from at
6 all. I think it is more of in his youthful sort of vigor --
7 he's an idealistic guy. He still is.

8 THE COURT: Sure.

9 MR NANCE: He still is. He still is now, but he was
10 maybe even more so then, and there's a tendency -- if you take
11 anything to its absolute logical extreme, you start seeing the
12 world in black and white. And I think it was this notion -- I
13 am just sort of playing parlor psychologist here -- but it is
14 the idea of, you know, this is our little above-ground
15 political protest, they are getting a little attention but
16 they aren't really getting the effect we want, nothing is
17 really changing. The wilderness is being savaged, and nothing
18 is being done to stop it. Nobody seems to really care. We
19 have to make a statement. We have to do something. It is the
20 idea of sort of a Marley righteous blinders that --

21 THE COURT: Moral superiority.

22 MR. NANCE: Yep, I think he would agree --

23 THE COURT: It is the same Kool-aid that the
24 constitutionalists drink from. They are parallel.

25 MR NANCE: I wouldn't quarrel with you on that a bit.

1 He has to act now, he has to save the planet, this has to
2 happen, and it is acting without recognizing the practical
3 realities of property rights and severe collateral
4 consequences, what can happen here.

5 He's had a lot of time to think about this. There has
6 been a lot of water under the bridge. It's been 11 years --
7 almost 11 years, over half of it spent traveling, living in
8 foreign cultures, talking to different people.

9 Justin Solondz is a different person now, a more mature
10 person now by far than he was 11 years ago. He's still
11 idealistic. He's more mature. He's more grounded. He's
12 actually less interested now in political matters. I think
13 even above-ground protests are something he wouldn't care to
14 really do now.

15 He prefers -- I am not making this up -- he actually
16 prefers reading the great philosophers about leading a good
17 life. He knows he's got prison time to do here. He accepts
18 that. We ask you to heed the words of one of his supporters
19 to "hold him accountable for what he did but don't crush him."

20 The carefully-negotiated plea agreement with its agreed
21 recommendation of seven months, we would submit does hold him
22 accountable. It is a very stiff sentence. It meets all the
23 requirements of the law, and it should be the Court's
24 sentence.

25 THE COURT: Thank you very much, Mr. Nance.

1 Mr. Woods?

2 MR. WOODS: Your Honor, may it please the Court.

3 Today marks one of the final chapters in a long saga that has
4 stretched back all the way back to May 2001, and you really
5 cannot overstate the terrible nature of the crime that
6 occurred on that night.

7 This was a crime that threatened the lives of the first
8 responders who arrived to find just a towering inferno, an
9 entire building engulfed in flames. It is a crime that
10 destroyed years of research. People who had just put their
11 heart, their energy, their money and their career into this
12 research only to see it literally go up in flames.

13 It is a crime that caused terror and fear for the people
14 who used that building, who didn't know what was next, what
15 else might be targeted. It was a crime that caused fear for
16 the university and certainly for the community in which this
17 building was. It was a crime that was senseless in every
18 respect. I mean, we all hold beliefs that are dear and true
19 to our heart, but however noble those may or may not be, it is
20 never a justification to do a crime such as this.

21 Today also marks a sad day because the man who appears
22 before you today was a man who had great opportunity and
23 promise. Many of the defendants who appear in this very
24 courtroom, they didn't have a chance to go to college, let
25 alone an elite one.

1 Many defendants come from broken homes, not ones with two
2 loving parents. Many times the courtroom is empty or there's
3 no, or few, letters of support. This defendant had that
4 support network. Those letters, the wonderful letters --

5 THE COURT: Right.

6 MR. WOODS: -- from good people. And yet he chose
7 the wrong course. This is a person with a great mind, yet he
8 chose the wrong course. It is someone who has spent nearly
9 his entire 20s and now into his 30s either on the run or in
10 jail. It is sad.

11 We stand before you asking the Court to impose a sentence
12 of 84 months. This was a sentencing recommendation that I
13 assure the Court we did not make lightly. It is one that we
14 spent countless hours, both within the U.S. Attorney's Office
15 and, frankly, with Mr. Nance as to what was the just sentence
16 in this case.

17 When you look at the 3553 factors and you start with the
18 nature and circumstances of the offense, there really are
19 three things that stand out. First, this was not a rash
20 decision. It wasn't a heat-of-the-moment mistake. It wasn't
21 something that was a split second of poor decision-making.
22 This is something that the defendant lived with for about a
23 month. Whether it was the time when he was first approached
24 by this plan, whether it was the time he spent in the clean
25 room constructing the devices, whether it was on the drive up

1 from Olympia all the way up to Seattle, whether it was the
2 walk down to the university building, at each and every one of
3 those moments, those countless moments, he had the chance to
4 step back and say: What am I doing? What can this cause?
5 All the consequences that can happen from this terribly
6 reckless act, and yet he proceeded.

7 The second factor is his role in this offense. Mr. Nance
8 uses words such as whether his role was greater, whether his
9 role was more important. Here's one thing that I think is the
10 most appropriate word: serious. Because if we put aside Bill
11 Rodgers, who we all recognize was the leader of this
12 conspiracy, when your role is to actually construct the
13 devices, when you sit there in that clean room assembling the
14 very materials that are going to start a fire, you can't
15 divorce what the consequences are of that action.

16 Maybe if you were the lookout; maybe if your role is to
17 cut the glass and help make entry; maybe if your role is to
18 walk down the items. It certainly doesn't excuse for one
19 second and certainly doesn't minimize for one second what
20 those people did. But perhaps you can somehow tell yourself I
21 am more on the periphery. But boy, when you are constructing
22 the actual devices, you know what you are doing and you live
23 with the consequences of what might happen.

24 Finally, you cannot divorce, of course, when you talk
25 about the nature and circumstances of the offense, of just the

1 terrible nature of this crime.

2 The sentence is also appropriate when you put it in the
3 context of the other sentences that have been imposed in this
4 case. The fact is, the other three surviving defendants all
5 provided substantial assistance to the government. Lacey
6 Phillabaum and Jennifer Kolar testified in this courthouse.

7 THE COURT: Right.

8 MR. WOODS: Briana Waters' cooperation is perhaps one
9 of the reasons that the case resolved in the manner in which
10 it did. Mr. Nance also mentioned Daniel McGowan. Daniel
11 McGowan is -- let me put it this way. The U.S. Attorney's
12 Office in Oregon credited him with cooperation. They filed a
13 5K motion, and I understand why Mr. Nance characterized that
14 as not cooperating because it was an unusual situation in
15 which he provided information without identifying other
16 specific people who helped him. But it was cooperation that
17 was recognized by the U.S. Attorney's Office in Oregon.

18 Finally, when we look at the 3553 factors, we look at the
19 history and characteristics of this defendant. We are not
20 blind that the person who sits in this courtroom today is
21 someone who is different than when he came into this offense.
22 With age comes maturity.

23 But Mr. Solondz must atone for what he did, and so for
24 those reasons, we ask the Court to impose a sentence of
25 84 months. The amount of restitution, which is not in

1 dispute, is \$6,092,649.95, joint and several, and \$200 in
2 special assessments.

3 Thank you.

4 THE COURT: Thank you.

5 MR. NANCE: I neglected to call attention to
6 Mr. Solondz' supporters in the courtroom, including his
7 parents who came from New Jersey, Paul and Bianca.

8 THE COURT: Thank you. Mr. McNickle, anything you
9 want to add to your report?

10 PROBATION OFFICER: Unless Your Honor has any
11 questions beyond what's listed in our report, I will just
12 stand by what's in our justification.

13 THE COURT: Thank you.

14 Mr. Solondz, anything you want to say to the Court before
15 the Court imposes sentence?

16 THE DEFENDANT: No, Your Honor, I have nothing
17 further to say.

18 THE COURT: The offense level is 33. The criminal
19 history category is VI. The range is 235 to 293 months. The
20 recommendation is 84 months.

21 My judicial philosophy is when in doubt, trust the
22 lawyers. You've done a good job of handling this case. I
23 cannot take fault with the recommendation that you've made,
24 and I will accept the recommendation for 84 months.

25 The reasons for the sentence, apart from the obvious

1 seriousness of the offense, also deal with the personal
2 characteristics of the defendant, a work in progress, I
3 suppose. But more than any other factor is the respect for
4 the rule of law. People who have deep passions about
5 political events sometimes permit themselves to view
6 themselves as above the law. I have had a number of cases in
7 the last couple of months when I have talked about
8 vigilanteism and people who don't trust the law -- the rule of
9 law any more.

10 Last year I went to Albania, and they have got -- they
11 like Americans, they don't like Russians, but their culture is
12 so corrupt. Parents of a third grade student have to bribe to
13 get the third grader grades and so forth, and one of the
14 things that bind us as a civilized people is the adherence to
15 the rule of law. And what I said parallels between the
16 radical left and the radical right, there's very little
17 difference between their motives and their aims.

18 I would tell you that in my life, I have seen the power of
19 the rule of law, to make right in justice, in time sometimes,
20 not immediate, not instantaneous. It is a process, but it is
21 the only code that binds civilized people together. You have
22 attacked that belief, that system, and that is perhaps the
23 most reprehensible thing about your conduct.

24 Now, you are a bright person. You are a young person.
25 Your life is not over. You will no doubt be reading and

1 contemplating serious questions about the nature of man, the
2 relationship of man to man and spiritual issues. I hope that
3 you will take some solace from the many blessings that you
4 have been bestowed with: two parents who care for you, you
5 inherited a good mind, a keen mind.

6 Everybody in this courtroom right now has to live with
7 some regret. I do. I know all the people I work with here,
8 we discuss it. They have things that they have done in life
9 that causes them pain, but you get on with it. You get on
10 with it. Think of those people who lost the research and
11 their career. Ponder the rules that we ascribe to, adhere to.
12 You will be out, and I doubt you will do anything but be a
13 healthy, happy individual, I hope.

14 So Mr. Solondz, as to Counts 1 and 5, you will be
15 committed to the custody of the United States Bureau of
16 Prisons for a term of 84 months.

17 Upon release from imprisonment, you will serve a
18 three-year term of supervised release subject to the standard
19 conditions, as well as the following special conditions:

- 20 1. Cooperate in the collection of DNA;
- 21 2. You will be prohibited from possessing a firearm or
22 destructive device;
- 23 3. You will submit to one drug and/or alcohol test within
24 15 days of placement on probation or release from
25 imprisonment, and at least two periodic drug and/or alcohol

1 tests thereafter, not to exceed eight valid tests per month.

2 You will participate as instructed by the U.S. Probation
3 Office in a program approved by the probation office for
4 treatment of narcotic addiction, drug dependency, or substance
5 abuse, which may include testing to determine if you've
6 reverted to the use of drugs or alcohol.

7 The defendant shall also abstain from the use of alcohol
8 and/or other intoxicants during the term of supervision. You
9 must contribute toward the cost of any programs, to the extent
10 you are financially able to do so.

11 You will submit your person, residence, office, safety
12 deposit box, storage unit, property, or vehicle to a search
13 conducted by a U.S. Probation Officer or any other law
14 enforcement officer at a reasonable time and in a reasonable
15 manner, based upon reasonable suspicion of contraband or
16 evidence of a violation of a condition of supervision.

17 Failure to submit to a search may be grounds for
18 revocation, and you will notify any other residents that the
19 premises may be subject to searches pursuant to this
20 condition.

21 Restitution in the amount of \$6,092,649.95 is due
22 immediately. Any unpaid amount is to be paid during the
23 period of supervision in monthly installments of not less than
24 10 percent of your gross monthly household income. Interest
25 on the restitution shall be waived.

1 You will provide the probation officer with access to any
2 requested financial information, including authorization to
3 conduct credit checks and obtain copies of your federal income
4 tax returns.

5 You will not obtain or possess any driver's license,
6 Social Security number, birth certificate, passport or any
7 other form of identification in any other name other than your
8 true legal name, without the prior written approval of the
9 defendant's probation officer.

10 You will not have contact with co-conspirators in
11 Washington and Oregon or members of any group or individuals
12 whose purpose is the unlawful use, or threatened use, of
13 violence against persons or property to intimidate or coerce a
14 government or civilian population in furtherance of political
15 or social objectives.

16 The Court finds the defendant does not have the ability to
17 pay a fine. However, he shall pay a special assessment in the
18 amount of \$200 for Counts 1 and 5, \$100 each, respectively.

19 So is there any reason why judgment comporting with that
20 order isn't appropriate now?

21 MR. WOODS: No.

22 MR NANCE: Your Honor, I would ask the Court to make
23 a finding or state as a basis on the record, or at least a
24 partial basis, that the Court's departure variance is the
25 criminal history category VI, overstating Mr. Solondz'

1 criminal history and/or propensity to commit future crimes.

2 Additionally, and this is in our briefing --

3 THE COURT: Right.

4 MR NANCE: -- the statute actually invites the Bureau
5 of Prisons to designate and to consider the Court's statements
6 concerning the purpose for which the sentence to imprisonment
7 was determined to be warranted and/or recommending a type of
8 penal or correctional facility as appropriate.

9 We believe and would like to see Mr. Solondz placed back
10 near his family in the New York/New Jersey region. Maybe it
11 is asking for too much, but I think his family found this New
12 York based Bard Prison Institute, and apparently there's a
13 statutory basis -- there's discretion within the Bureau of
14 Prisons to permit that sort of thing. One of the factors they
15 consider is any court commentary on that.

16 THE COURT: Mr. Woods?

17 MR. WOODS: Your Honor, we have no opposition to any
18 of those recommendations being made.

19 THE COURT: Well, I guess he has benefited in some
20 way from being on the run so long and maturing. I don't judge
21 him to be a serious threat to commit violence in the future.
22 I don't get much of a picture of himself because he doesn't
23 want to speak, so everybody else has spoken for him, I guess.

24 But I will say that the criminal history category of VI is
25 not justified by the conduct that I have seen from the record,

1 from his last six or seven years of his life. And anything
2 more than that, if you want to make a specific recommendation
3 for the New York facility, I'd go along with that. If you
4 want, put it in the judgment.

5 Do you want the facility? 18 U.S.C. 3621(b) --

6 MR NANCE: It's 18 -- that's right, 3621(b), that's
7 the authority for it. There are five particular state prison
8 systems in New York.

9 THE COURT: New York based Bard Prison Initiative?

10 MR NANCE: Yes, I don't have the -- I can provide
11 those to the Court. If not immediately, I can get them in the
12 very near future. It is five state facilities within New York
13 State and, as an alternative to that, if for some reason the
14 Bureau of Prisons cannot agree to that, we would ask for FCI
15 Otisville, which I believe is in New York, in the area.

16 MR. WOODS: Your Honor, if I may offer a suggestion,
17 which is that I believe a placement recommendation can also be
18 made as an order, that the Court would make recommendations.

19 I wonder, just in light of getting the precise language
20 down, whether that might not be better done after the specific
21 facilities are identified.

22 THE COURT: We can certainly do that, if Mr. Solondz
23 waives his presence and you can work on that and give it back
24 to me to sign the judgment if you want, in short order.

25 MR. WOODS: Your Honor, perhaps we also can turn the

1 judgment in and a proposed order that just sets forth
2 recommendations on placement. I believe the authority is that
3 placement recommendations are just recommendations.

4 THE COURT: Yes. You want categorical
5 recommendations instead of a specific place.

6 MR. NANCE: We would be willing to waive his presence
7 if there's a hearing required for that.

8 THE COURT: If you guys agree with it, I will sign
9 it. Sometimes -- there are some offenses that we talk about
10 that -- a possession of a drug in Texas gets 30 months, and we
11 give them a ticker tape parade. So I recognize that place
12 matters, and I don't want to give Mr. Solondz a ticker tape
13 parade. I just want him to know he's got a future, and I
14 don't want anybody to suffer paralysis because of their past
15 conduct. That is all. But you've got to do the time. Okay?

16 THE DEFENDANT: Yes.

17 MR. WOODS: May I approach Mr. Nance?

18 THE COURT: Yes.

19 MR. NANCE: It looks to be in order.

20 MR. WOODS: May I approach?

21 THE COURT: What are we going to do? You are ready
22 for me to sign this, the categorical --

23 MR. WOODS: We would ask you to sign it and the
24 parties would come forward with a proposed order on placement
25 recommendations, I believe is what we would suggest.

1 MR. NANCE: That would supplement this?

2 THE COURT: Yes. With that condition, the judgment
3 conforms to the order of the Court, and I am signing the
4 judgment at this time.

5 Mr. Solondz, at paragraph 11 of the plea agreement, if you
6 are sentenced to a custodial term within or below the
7 guidelines, which I have done now, you have waived your right
8 to appeal the sentence imposed by this Court.

9 Do you understand that?

10 THE WITNESS: Yes, Your Honor, I do.

11 THE COURT: That means the only collateral attack you
12 can take against the judgment is in the unlikely event of
13 ineffective assistance of counsel.

14 THE DEFENDANT: Okay.

15 THE COURT: Anything further? I will await the
16 supplemental order. Anything further?

17 MR. WOODS: No.

18 MR. NANCE: No.

19 THE COURT: Court is at recess.

20 (Proceedings concluded at 2:25 p.m.)

21 * * * * *
22 C E R T I F I C A T E

23 I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

24 /S/ Teri Hendrix
25 Teri Hendrix, Court Reporter

March 29, 2012
Date